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May 19, 2004

VIA HAND DELIVERY

Honorable Deborah Taylor Tate, Chairman
c/o Sharla Dillon, Docket & Records Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

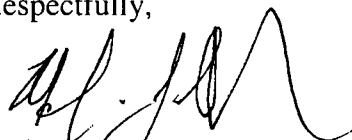
**RE: Tennessee Coalition of Rural Incumbent Telephone Companies and
Cooperatives Request for Suspension of Wireline to Wireless Number
Portability Obligations Pursuant to Section 251(f)(2) of the
Communications Act of 1934, as Amended
TRA Docket # 03-00633**

Dear Chairman Tate.

Enclosed please find fourteen (14) copies of the following for filing in the above-captioned matter: (1) a May 13, 2004, FCC Order in CC Docket No. 95-116, denying The North-Eastern Pennsylvania Telephone Company's petition for an extension of the May 24, 2004 deadline for implementing number portability; (2) a May 13, 2004, FCC Notice of Apparent Liability for Forfeiture against CenturyTel, Inc., Century Tel of Washington, Inc., CenturyTel of Cowiche, Inc. and CenturyTel of Inter Island, Inc. for failure to route calls from CenturyTel's customers in Washington to wireless customers with ported numbers, and (3) a May 13, 2004, FCC Public Notice captioned "Wireless Telecommunications Bureau and Wireline Competition Bureau Remind Carriers Outside the 100 Largest MSAs Of The Upcoming May 24, 2004 Local Number Portability Implementation Deadline."

Please "File Stamp" the additional copy of these documents for our records. If you have any questions or require additional information, please let me know.

Respectfully,



Melvin J. Malone

MJM/cgb
Enclosures
1567964_1 DOC

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Honorable Deborah Taylor Tate, Chairman
May 19, 2004
Page 2

cc: R. Dale Grimes
Timothy C. Phillips
Edward Phillips

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Telephone Number Portability

Petition of The North-Eastern Pennsylvania
Telephone Company for Temporary Waiver of its
Porting Obligations

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) CC Docket No. 95-116
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ORDER

Adopted: May 12, 2004

Released: May 13, 2004

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny the petition filed by The North-Eastern Pennsylvania Telephone Company (NEP) seeking an extension of the May 24, 2004 deadline for implementing local number portability (LNP or porting).¹ We find that NEP has not demonstrated that special circumstances warrant a waiver or that such an extension is in the public interest. We will not, however, enforce NEP's LNP obligations until sixty days after the release of this Order to provide NEP with an opportunity to make arrangements to come into compliance with its LNP obligations.

II. BACKGROUND

2. Local Number Portability. Section 251(b) of the Communications Act of 1934, as amended, (Act)² mandates local exchange carriers (LECs) to provide LNP in accordance with the requirements outlined by the Commission.³ The Commission, in the *Number Portability First Report and Order*, established the parameters for LNP and required commercial mobile radio service (CMRS or wireless)

¹ See Petition of The North-Eastern Pennsylvania Telephone Company Petition for Waiver of Section 52.23(b) of the Commission's Rules, filed March 23, 2004 (NEP Petition). The NEP petition was placed on public notice on March 26, 2004. See *Wireline Competition Bureau Seeks Comment on the Petition of The North-Eastern Pennsylvania Telephone Company for Temporary Waiver of the Commission's Number Portability Requirements*, Public Notice, CC Docket No. 95-116, DA 04-798 (rel. March 26, 2004). Comments were filed by Cellular Telecommunications & Internet Association (CTIA), Dobson Communications Corporation (Dobson), Nextel Communications, Inc. (Nextel) and Verizon Wireless (Verizon), and reply comments were filed by National Telecommunications Cooperative Association (NTCA), NEP, and T-Mobile USA, Inc. (T-Mobile).

² 47 U.S.C. §§ 151-174.

³ 47 U.S.C. §251(b).

providers to become LNP-capable pursuant to sections 1, 2, 4(i), and 332 of the Act.⁴ In doing so, the Commission concluded that the public interest is served by making LNP available across different technologies and thereby promoting competition between CMRS service providers and wireline carriers.⁵ Initially, CMRS providers were required to become LNP-capable by June 30, 1999.⁶ The Commission subsequently extended this deadline, and required CMRS carriers operating in the top 100 Metropolitan Statistical Areas (MSAs) to provide number portability upon request by another carrier by November 24, 2003.⁷ CMRS carriers operating outside the top 100 MSAs must become LNP-capable within six months of a request or by May 24, 2003, whichever is later.⁸ On November 10, 2003, the Commission concluded that, as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier's "coverage area" overlaps the geographic location of the rate center in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.⁹ The Commission, however, granted wireline carriers operating in areas outside of the 100 largest MSAs, in certain circumstances, a waiver until May 24, 2004 of the requirement to port numbers to wireless carriers.¹⁰ The Commission later granted certain LECs with fewer than two percent of the nation's subscriber lines in the aggregate nationwide (Two Percent Carriers) that operate in the top 100 MSAs a limited waiver of the wireline-to-wireless porting requirement.¹¹

3. NEP's Request for Waiver. NEP is a rural incumbent LEC providing service in Northeast Pennsylvania.¹² NEP represents that it decided, in 2001, to upgrade its switch network and sought

⁴ *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8431-42 (1996) (*Number Portability First Report and Order*).

⁵ See *id.* at 8432, ¶ 153.

⁶ *Id.* at 8440, ¶ 166.

⁷ See *Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability*, Memorandum Opinion and Order, 17 FCC Rcd 14972 (2002) (*Verizon Wireless LNP Forbearance Order*); *Cellular Telecommunications & Internet Association v. FCC*, No. 02-1264 (D.C. Cir. June 6, 2003) (Dismissing in part and denying in part CTIA's appeal of the Commission's decision in the *Verizon Wireless LNP Forbearance Order*). CMRS carriers were required to be LNP-capable by November 24, 2003 if requests from other carriers were received by February 24, 2003. *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd at 14985-86. The *Verizon Wireless LNP Forbearance Order* also lays out the history of the CMRS carriers' LNP deadline extensions. See also, *Western Wireless Limited, Conditional Petition for Waiver of Local Number Portability and Thousands-Block Number Pooling Obligations*, CC Docket Nos. 95-116 and 99-200, Order, 18 FCC Rcd 24692 (Wireline Comp. Bur. 2003) (*Western Wireless Order*).

⁸ *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd at 14986.

⁹ See *Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, 23706-07 (2003) (*Intermodal LNP Order*).

¹⁰ *Id.*

¹¹ *Telephone Number Portability*, Order, 19 FCC Rcd 875 (2004).

¹² NEP's existing switch network consists of eight exchanges. These exchanges include the Union Dale, Harford, New Milford, Jackson, Thompson, Pleasant Mount, Clifford, and Forest City exchanges. See NEP Petition at 2, 5.

informal quotes from various switch equipment manufacturers at that time.¹³ NEP subsequently concluded that it would be more efficient and economical to replace its existing switches with software based switch ("soft switch") technology.¹⁴ Accordingly, in March 2003, NEP sought formal quotes and proposals from several switch manufacturers for soft switches.¹⁵ In September 2003, NEP contracted with Taqua, Inc. (Taqua) to purchase eight soft switches to be installed on a phased-in basis, beginning on May 1, 2004 and ending on December 31, 2005.¹⁶ However, according to NEP, certain service feature implementation issues need to be resolved before the first switch can be put into service.¹⁷ NEP requests a waiver to provide additional time to accommodate the deployment schedule for its eight exchanges and to resolve the implementation issues.¹⁸

4. NEP contends good cause exists for granting an extension of the May 24, 2004 porting implementation deadline.¹⁹ Specifically, NEP maintains that it has been planning and implementing network upgrades since 2001 to address expected network capability requirements.²⁰ NEP argues that it did not anticipate that intermodal porting²¹ would be an "imminent requirement" until the Commission's *Intermodal LNP Order* released in November 2003.²² Upon release of the order, NEP contends that it immediately reviewed its number portability plans with Taqua.²³ NEP maintains that, while working with Taqua to resolve certain service feature issues, it became apparent to NEP that it will be unable to meet the May 24, 2004 implementation deadline for all of its switches.²⁴ Further, NEP states that it will provide the Commission with quarterly progress reports and updates to the deployment schedule, including solutions that will allow NEP to advance its deployment schedule and number portability.²⁵

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 3, 5.

¹⁷ *Id.* at 3.

¹⁸ See *id.* at 5. NEP's projected switch in-service date for its eight exchanges is as follows: (1) Union Dale - May 1, 2004; Harford - June 30, 2004; New Milford - September 30, 2004; Jackson - December 31, 2004; Thompson - March 31, 2005; Pleasant Mount - June 30, 2005; Clifford - September 30, 2005; and Forest City - December 31, 2005. *Id.* NEP notes, however, that this deployment schedule is dependent on Taqua's resolution of service feature problems and the successful deployment of LNP. *Id.*

¹⁹ *Id.* at 1; NEP Reply Comments at 1-2.

²⁰ NEP Petition at 2-3.

²¹ Intermodal porting is porting between wireline and wireless service providers.

²² *Id.* at 4.

²³ *Id.*

²⁴ *Id.* at 5.

²⁵ *Id.* at 6.

5. CTIA, Dobson, Nextel, Verizon, and T-Mobile oppose granting NEP's waiver.²⁶ They argue that NEP has not demonstrated through substantial, credible evidence that special circumstances justify a waiver of the Commission's LNP rules.²⁷ They also contend that the public interest would not be served if such waiver is granted.²⁸ Specifically, they argue that grant of NEP's waiver would undermine the Commission's goal of promoting competition and cause customer confusion.²⁹

6. One commenter, NTCA, supports NEP's petition.³⁰ NTCA maintains that, because NEP is moving toward full compliance with its LNP obligations, the Commission should provide NEP with a temporary waiver.³¹ NTCA contends that large carriers, such as Nextel and Verizon, fail to take into account the financial, technical, and staffing realities of small LECs.³² According to NTCA, it would have been financially irresponsible for NEP to upgrade its equipment prior to having a firm obligation to do so.³³

7. *Waiver Standard.* The Commission's rules may be waived when good cause is demonstrated.³⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³⁵ In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³⁶ Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.³⁷ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.³⁸

²⁶ See CTIA Comments at 1-2; Dobson Comments at 1-2; Nextel Comments at 1-3; Verizon Comments at 1-3; T-Mobile Reply Comments at 1-2.

²⁷ See CTIA Comments at 2-3; Dobson Comments at 3-8; Nextel Comments at 3-6; Verizon Comments at 3-4; T-Mobile Reply Comments at 2-4.

²⁸ See CTIA Comments at 3; Dobson Comments at 8; Nextel Comments at 7-8; Verizon Comments at 5-7; T-Mobile Comments at 4-5.

²⁹ *Id.*

³⁰ See NTCA Reply Comments.

³¹ See *id.* at 1.

³² *Id.* at 3.

³³ *Id.* at 2-3.

³⁴ 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

³⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (*Northeast Cellular*).

³⁶ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

³⁷ *WAIT Radio*, 418 F.2d at 1157.

³⁸ *Id.* at 1159.

8. In seeking an extension of the LNP deployment deadline, a carrier must provide substantial, credible evidence to support its contention that it is unable to comply with the deployment schedule.³⁹ A request for an extension of a deadline must be filed with the Commission at least sixty days in advance of the deadline.⁴⁰

III. DISCUSSION

9. We find that NEP has not demonstrated good cause to justify waiving the May 24, 2004 porting deadline. In particular, we agree with those commenters who argue that NEP has not shown through substantial, credible evidence that special circumstances warrant an extension of the porting deadline until December 31, 2005 and that postponing porting as requested will serve the public interest.⁴¹ We decline, however, to enforce NEP's LNP obligations for sixty days following the release of this Order.

10. *Special Circumstances.* We are not persuaded by NEP's claims that special circumstances exist warranting a waiver of the May 24, 2004 porting deadline in order to accommodate NEP's switch delivery and deployment schedule, and provide additional time to resolve any service feature issues. We find that NEP has not presented "extraordinary circumstances beyond its control in order to obtain an extension of time."⁴² Rather, NEP consciously made a business decision to upgrade its switches on a certain schedule.⁴³ NEP has not shown that challenges it may face are different from those faced by similarly situated carriers who are able to comply.⁴⁴ Generalized references to limited resources and implementation problems do not constitute substantial, credible evidence justifying an exemption from the porting requirements. NEP has known since 1996 that it would need to support LNP within six months of a request from a competing carrier.⁴⁵ Although wireless LNP was delayed, all carriers have been on notice since July 2002 that wireless and intermodal LNP would become available beginning in November 2003.⁴⁶ Thus, NEP has had sufficient time to follow through with these mandates and prepare for LNP.⁴⁷

³⁹ 47 C.F.R. § 52.23(e); see also 47 C.F.R. § 52.31(d).

⁴⁰ *Id.*

⁴¹ See CTIA Comments at 2-3; Dobson Comments at 3-8; Nextel Comments at 3-6; Verizon Comments at 9-4; T-Mobile Reply Comments at 2-4.

⁴² *Number Portability First Report and Order*, 11 FCC Rcd at 8397, ¶ 85.

⁴³ See *supra* ¶ 3.

⁴⁴ See *Western Wireless Order*, 18 FCC Rcd at 24696, ¶ 10 (In denying a waiver request to extend the thousands-block number pooling and LNP deadlines, the Bureau found that "Western ha[d] not demonstrated that it will sustain costs that are different from, or burdensome than, the costs of similarly situated Tier II wireless carriers").

⁴⁵ See *Number Portability First Report and Order*, 11 FCC Rcd 8352; *Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7273-75, ¶¶ 60-66 (1997) (*Number Portability Reconsideration Order*).

⁴⁶ See *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd 14972.

⁴⁷ See *Western Wireless Order*, 18 FCC Rcd at 24697-98, ¶ 13.
(continued...)

11. *Public Interest.* We also conclude that an extension of the porting deadline until December 31, 2005 would not serve the public interest because it would unduly delay the benefits of number portability to the public and could cause customer confusion. Portability has promoted, and will continue to promote, competition, especially in underserved areas, by allowing consumers to move to carriers that better serve consumers' needs without having to make the difficult choice to give up their numbers.⁴⁸ Thus, we find that the public interest would be served by implementing porting as soon as possible.

12. Furthermore, NEP should have considered the porting requirements, set out by the Commission long ago, when it contracted with vendors to install necessary upgrades. Accordingly, we conclude that granting NEP's request to extend the porting deadline would be inconsistent with the Commission's policy to promote competition, consumer choice, and efficient number use. We therefore deny NEP's request for a waiver of the May 24, 2004 porting implementation deadline.

13. Although we are not persuaded that a waiver of the porting requirements until December 31, 2005 is justified, we decline to enforce NEP's LNP obligations for sixty days following the release of this Order.⁴⁹ We find that some limited time to allow NEP to make the necessary preparations to implement LNP is reasonable to ensure compliance with our rules.⁵⁰ Non-enforcement for sixty days will also help to avoid any network disruptions, maximize trouble-free operation of LNP, and ensure that customers' requests for services will not be delayed due to carriers' difficulty in obtaining numbering resources.⁵¹

(Continued from previous page)

⁴⁸ *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd at 14984, ¶ 28.

⁴⁹ See *Western Wireless Order*, 18 FCC Rcd 24692 (in denying Western's petition for waiver to extend the thousands-block number pooling (pooling) and LNP deadlines, the Bureau found that a sixty-day non-enforcement period would provide Western the time needed to properly implement and commence LNP and pooling).

⁵⁰ *Id.* at 24698, ¶ 16.

⁵¹ *Id.*

IV. ORDERING CLAUSE

14. Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 1, 4(i), 251, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251, 332, and the authority delegated under sections 0.91, 0.291, 1.3, 52.9(b), and 52.23(e) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 52.9(b), 52.23(e), the petition filed by The North-Eastern Pennsylvania Telephone Company is DENIED to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey

Carol E. Matthey
Deputy Chief, Wireline Competition Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Telephone Number Portability

Petition of The North-Eastern Pennsylvania
Telephone Company for Temporary Waiver of its
Porting Obligations

CC Docket No. 95-116

ORDER

Adopted: May 12, 2004

Released: May 13, 2004

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny the petition filed by The North-Eastern Pennsylvania Telephone Company (NEP) seeking an extension of the May 24, 2004 deadline for implementing local number portability (LNP or porting).¹ We find that NEP has not demonstrated that special circumstances warrant a waiver or that such an extension is in the public interest. We will not, however, enforce NEP's LNP obligations until sixty days after the release of this Order to provide NEP with an opportunity to make arrangements to come into compliance with its LNP obligations.

II. BACKGROUND

2. Local Number Portability. Section 251(b) of the Communications Act of 1934, as amended, (Act)² mandates local exchange carriers (LECs) to provide LNP in accordance with the requirements outlined by the Commission.³ The Commission, in the *Number Portability First Report and Order*, established the parameters for LNP and required commercial mobile radio service (CMRS or wireless)

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providers to become LNP-capable pursuant to sections 1, 2, 4(i), and 332 of the Act.⁴ In doing so, the Commission concluded that the public interest is served by making LNP available across different technologies and thereby promoting competition between CMRS service providers and wireline carriers.⁵ Initially, CMRS providers were required to become LNP-capable by June 30, 1999.⁶ The Commission subsequently extended this deadline, and required CMRS carriers operating in the top 100 Metropolitan Statistical Areas (MSAs) to provide number portability upon request by another carrier by November 24, 2003.⁷ CMRS carriers operating outside the top 100 MSAs must become LNP-capable within six months of a request or by May 24, 2003, whichever is later.⁸ On November 10, 2003, the Commission concluded that, as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier's "coverage area" overlaps the geographic location of the rate center in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.⁹ The Commission, however, granted wireline carriers operating in areas outside of the 100 largest MSAs, in certain circumstances, a waiver until May 24, 2004 of the requirement to port numbers to wireless carriers.¹⁰ The Commission later granted certain LECs with fewer than two percent of the nation's subscriber lines in the aggregate nationwide (Two Percent Carriers) that operate in the top 100 MSAs a limited waiver of the wireline-to-wireless porting requirement.¹¹

3. NEP's Request for Waiver. NEP is a rural incumbent LEC providing service in Northeast Pennsylvania.¹² NEP represents that it decided, in 2001, to upgrade its switch network and sought

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5. CTIA, Dobson, Nextel, Verizon, and T-Mobile oppose granting NEP's waiver.²⁶ They argue that NEP has not demonstrated through substantial, credible evidence that special circumstances justify a waiver of the Commission's LNP rules.²⁷ They also contend that the public interest would not be served if such waiver is granted.²⁸ Specifically, they argue that grant of NEP's waiver would undermine the Commission's goal of promoting competition and cause customer confusion.²⁹

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³² *Id.* at 3.

³³ *Id.* at 2-3.

³⁴ 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

³⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (*Northeast Cellular*).

³⁶ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

³⁷ *WAIT Radio*, 418 F.2d at 1157.

³⁸ *Id.* at 1159.

8. In seeking an extension of the LNP deployment deadline, a carrier must provide substantial, credible evidence to support its contention that it is unable to comply with the deployment schedule.³⁹ A request for an extension of a deadline must be filed with the Commission at least sixty days in advance of the deadline.⁴⁰

III. DISCUSSION

9. We find that NEP has not demonstrated good cause to justify waiving the May 24, 2004 porting deadline. In particular, we agree with those commenters who argue that NEP has not shown through substantial, credible evidence that special circumstances warrant an extension of the porting deadline until December 31, 2005 and that postponing porting as requested will serve the public interest.⁴¹ We decline, however, to enforce NEP's LNP obligations for sixty days following the release of this Order.

10. *Special Circumstances.* We are not persuaded by NEP's claims that special circumstances exist warranting a waiver of the May 24, 2004 porting deadline in order to accommodate NEP's switch delivery and deployment schedule, and provide additional time to resolve any service feature issues. We find that NEP has not presented "extraordinary circumstances beyond its control in order to obtain an extension of time."⁴² Rather, NEP consciously made a business decision to upgrade its switches on a certain schedule.⁴³ NEP has not shown that challenges it may face are different from those faced by similarly situated carriers who are able to comply.⁴⁴ Generalized references to limited resources and implementation problems do not constitute substantial, credible evidence justifying an exemption from the porting requirements. NEP has known since 1996 that it would need to support LNP within six months of a request from a competing carrier.⁴⁵ Although wireless LNP was delayed, all carriers have been on notice since July 2002 that wireless and intermodal LNP would become available beginning in November 2003.⁴⁶ Thus, NEP has had sufficient time to follow through with these mandates and prepare for LNP.⁴⁷

³⁹ 47 C.F.R. § 52.23(e); see also 47 C.F.R. § 52.31(d).

⁴⁰ *Id.*

⁴¹ See CTIA Comments at 2-3; Dobson Comments at 3-8; Nextel Comments at 3-6; Verizon Comments at 3-4; T-Mobile Reply Comments at 2-4.

⁴² *Number Portability First Report and Order*, 11 FCC Rcd at 8397, ¶ 85.

⁴³ See *supra* ¶ 3.

⁴⁴ See *Western Wireless Order*, 18 FCC Rcd at 24696, ¶ 10 (in denying a waiver request to extend the thousands-block number pooling and LNP deadlines, the Bureau found that "Western ha[d] not demonstrated that it will sustain costs that are different from, or burdensome than, the costs of similarly situated Tier II wireless carriers").

⁴⁵ See *Number Portability First Report and Order*, 11 FCC Rcd 8352; *Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7273-75, ¶¶ 60-66 (1997) (*Number Portability Reconsideration Order*).

⁴⁶ See *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd 14972.

⁴⁷ See *Western Wireless Order*, 18 FCC Rcd at 24697-98, ¶ 13.
(continued....)

11. *Public Interest.* We also conclude that an extension of the porting deadline until December 31, 2005 would not serve the public interest because it would unduly delay the benefits of number portability to the public and could cause customer confusion. Portability has promoted, and will continue to promote, competition, especially in underserved areas, by allowing consumers to move to carriers that better serve consumers' needs without having to make the difficult choice to give up their numbers.⁴⁸ Thus, we find that the public interest would be served by implementing porting as soon as possible.

12. Furthermore, NEP should have considered the porting requirements, set out by the Commission long ago, when it contracted with vendors to install necessary upgrades. Accordingly, we conclude that granting NEP's request to extend the porting deadline would be inconsistent with the Commission's policy to promote competition, consumer choice, and efficient number use. We therefore deny NEP's request for a waiver of the May 24, 2004 porting implementation deadline.

13. Although we are not persuaded that a waiver of the porting requirements until December 31, 2005 is justified, we decline to enforce NEP's LNP obligations for sixty days following the release of this Order.⁴⁹ We find that some limited time to allow NEP to make the necessary preparations to implement LNP is reasonable to ensure compliance with our rules.⁵⁰ Non-enforcement for sixty days will also help to avoid any network disruptions, maximize trouble-free operation of LNP, and ensure that customers' requests for services will not be delayed due to carriers' difficulty in obtaining numbering resources.⁵¹

(Continued from previous page)

⁴⁸ *Verizon Wireless LNP Forbearance Order*, 17 FCC Red at 14984, ¶ 28.

⁴⁹ See *Western Wireless Order*, 18 FCC Red 24692 (in denying Western's petition for waiver to extend the thousands-block number pooling (pooling) and LNP deadlines, the Bureau found that a sixty-day non-enforcement period would provide Western the time needed to properly implement and commence LNP and pooling).

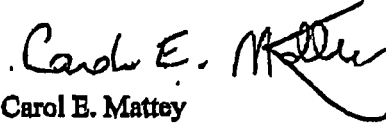
⁵⁰ *Id.* at 24698, ¶ 16.

⁵¹ *Id.*

IV. ORDERING CLAUSE

14. Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 1, 4(i), 251, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251, 332, and the authority delegated under sections 0.91, 0.291, 1.3, 52.9(b), and 52.23(e) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 52.9(b), 52.23(e), the petition filed by The North-Eastern Pennsylvania Telephone Company is DENIED to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Chief, Wireline Competition Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

2004.05.13 PM 2:01

T.R.A. DOCKET ROOM

In the Matter of)
)
CenturyTel, Inc., CenturyTel) File No. EB-04-IH-0012
of Washington, Inc., CenturyTel of) NAL Account No. 200432080136
Cowiche, Inc., and CenturyTel of)
Inter Island, Inc)
)
Apparent Liability for Forfeiture) FRN No. 0004-3651-44

**NOTICE OF APPARENT LIABILITY
FOR FORFEITURE**

Adopted: May 11, 2004

Released: May 13, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that CenturyTel, Inc., CenturyTel of Washington, Inc., CenturyTel of Cowiche, Inc., and CenturyTel of Inter Island, Inc (collectively, "CenturyTel"), during the period November 24, 2003 to April 14, 2004, apparently violated section 52.26(a) of the Commission's rules by willfully and repeatedly failing to route calls from CenturyTel's customers in Washington to wireless customers with ported numbers.¹ Based on our review of the facts and circumstances of this case, and for the reasons discussed below, we find that CenturyTel is apparently liable for a monetary forfeiture in the amount of one hundred thousand dollars (\$100,000).

II. BACKGROUND

2. Number portability is, "the ability of users of telecommunications services to retain, at the same location, existing telephone numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."² Under the Communications Act of 1934, as amended, (the "Act"), all telecommunications carriers have a duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.³

3. In 1996, the Commission required all local exchange carriers ("LECs") to begin a phased deployment of local number portability ("LNP") within the 100 largest metropolitan statistical areas

¹ 47 C.F.R. § 52.26(a), incorporating by reference the North American Numbering Council, Local Number Portability Administration Selection Working Group Report (Apr. 25, 1997). Call routing is discussed in Appendix D, "Architecture & Administrative Plan for Local Number Portability," § 7.8, N-1 Call Routing. This report is located at www.fcc.gov/wcb/tapd/Nanc/wknggrp.doc.

² 47 U.S.C. § 153(30); 47 C.F.R. § 52.21(l)

³ 47 U.S.C. § 251(a)(2)

("MSAs")⁴ The Commission explained that "the ability of end users to retain their telephone numbers when changing service providers gives customers flexibility in the quality, price, and variety of telecommunications services they can choose to purchase."⁵ On reconsideration, the Commission clarified that LECs need only provide number portability within the 100 largest MSAs for switches in which another carrier made a specific, bona fide, number portability request.⁶ Additionally, the Commission extended the number portability requirement to commercial mobile radio service ("CMRS") providers.⁷ CMRS carriers were required to have the capability to query number portability databases in order to deliver calls from their networks to ported numbers anywhere in the country by December 31, 1998.⁸ Three categories of CMRS providers – cellular, broadband personal communications service, and covered specialized mobile radio providers – were directed to offer number portability by June 30, 1999.⁹ After several extensions, the Commission established November 24, 2003 as the deadline for wireless-to-wireless number portability for the top 100 MSAs.¹⁰

4. Regardless of the status of a carrier's obligation to provide number portability, all carriers have the duty to *route* calls to ported numbers. In other words, carriers must ensure that their call routing procedures do not result in dropped calls to ported numbers. In this regard, the Commission stated clearly:

We emphasize that a carrier operating a non-portability-capable switch must still properly route calls originated by customers served by that switch to ported numbers. When the switch operated by the carrier designated to perform the number portability database query is non-portability-capable, that carrier could either send it to a portability-capable switch operated by that carrier to do the database query, or enter into an arrangement with another carrier to do the query.¹¹

⁴ *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996) ("*First Report and Order*"). MSAs, designated by the Bureau of Census, follow geographic borders and are defined using statistics that are widely recognized as indicative of metropolitan character. See *Policy and Rules Concerning Rates for Dominant Carriers*, Memorandum Opinion and Order, 12 FCC Rcd 8115, 8122, ¶ 17 n.26 (1997).

⁵ *First Report and Order*, 11 FCC Rcd 8368, ¶ 30.

⁶ *Telephone Number Portability*, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, 7273, ¶ 60 (1997) ("*First Reconsideration Order*").

⁷ See *First Report and Order*, 11 FCC Rcd at 8431-32, ¶¶ 152-53.

⁸ *Id.* at 8439, ¶ 165.

⁹ *Id.* at 8440, ¶ 166.

¹⁰ See *Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, Memorandum Opinion and Order, 17 FCC Rcd 14972, 14981, ¶ 23 (2002). The Commission subsequently waived, until May 24, 2004, the requirement that wireline carriers operating outside the top 100 MSAs port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned. See *Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, 23709, ¶ 29 (2004) ("*Intermodal Order*"). The Commission also granted a waiver of the wireline-to-wireless porting requirement, until May 24, 2004, for "two percent carriers" that operate in the top 100 MSAs. *Telephone Number Portability*, Order, 19 FCC Rcd 875 (2004).

¹¹ *First Reconsideration Order*, 12 FCC Rcd at 7277, ¶ 69. The issue of dropped calls to ported numbers was more recently raised in a slightly different context in the *Intermodal Order*. There the Commission observed, in response to comments filed by CenturyTel, that the calls to a customer with a number ported from a LEC to a CMRS carrier should not be dropped "because the Commission's rules require carriers to correctly route calls to ported numbers." *Intermodal Order*, 18 FCC Rcd at 23711-12 n. 92.

5. Furthermore, in adopting, with some modification, recommendations of the North American Numbering Council ("NANC") as set forth in a Working Group Report,¹² the Commission clearly imposed requirements on the carrier immediately preceding the terminating carrier, designated the "N-1 carrier," to ensure that number portability databases are queried and thus that calls are properly routed.¹³ Currently, call routing is accomplished by use of Location Routing Numbers ("LRNs").¹⁴ Under the LRN method, a unique ten-digit number is assigned to each central office switch.¹⁵ The routing information for end users who have ported their telephone numbers to another carrier is stored in a database, with the LRNs of the switches that serve the ported subscribers. Carriers routing calls to customers with ported numbers query this database to obtain the LRN that corresponds to the dialed number.¹⁶ This query is performed for all calls to switches from which at least one number has been ported.¹⁷ In adopting the Working Group Report, the Commission noted that if the N-1 carrier does not perform the database query, but instead relies on another entity to perform the query, the other entity may charge the N-1 carrier in accordance with long-term number portability cost allocation and recovery guidelines.¹⁸

6. CenturyTel provides local exchange service in 22 states in rural markets and small-to-mid-sized cities. CenturyTel also offers long distance service, Internet access, and data services.¹⁹ After receiving information that, post-implementation of wireless-to-wireless number portability, CenturyTel may not have been routing calls from CenturyTel customers in Washington to wireless customers with ported numbers, the Enforcement Bureau ("Bureau") issued a Letter of Inquiry to CenturyTel requesting information on this issue.²⁰

¹² *Telephone Number Portability*, Second Report and Order, 12 FCC Rcd 12281, 12283-84, ¶ 3 (1997) ("Second Report and Order"). In its *First Report and Order*, the Commission had directed the NANC to make recommendations regarding specific aspects of number portability implementation. *First Report and Order*, 11 FCC Rcd at 8401, ¶ 93. The NANC Working Group Report was incorporated by reference in section 52.26(a) of the Commission's rules. See 47 C.F.R. § 52.26(a) (stating that the "[l]ocal number portability administration shall comply with the recommendations of the North American Numbering Council (NANC) as set forth in the report to the Commission prepared by the NANC's Local Number Portability Administration Selection Working Group, dated April 25, 1997 (*Working Group Report*) and its appendices, which are incorporated by reference pursuant to 5 U.S.C. § 552(a) and 1 C.F.R. part 51.").

¹³ *Second Report and Order*, 12 FCC Rcd at 12323-24, ¶¶ 73-74.

¹⁴ *Id.*, 12 FCC Rcd at 12324, ¶ 75.

¹⁵ See *id.*, 12 FCC Rcd at 12287-88, ¶ 8.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*, 12 FCC Rcd at 12324, ¶ 75. The Commission permitted incumbent LECs to recover their costs of providing LNP through a tariffed five-year, levelized monthly end-user charge. See *Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11776-79, ¶¶ 142-47 (1998) ("Third Report and Order"), affirmed, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (2002). See also *Telephone Number Portability*, BellSouth Corporation Petition for Declaratory Ruling and/or Waiver, Order, FCC 04-91 (rel. Apr. 13, 2004).

¹⁹ See www.centurytel.com.

²⁰ See Letter of Inquiry from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC to Glen F. Post, III, Chief Executive Officer, CenturyTel, Inc. (Feb. 4, 2004) ("LOI").

III. DISCUSSION

7. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a monetary forfeiture penalty.²¹ In order to impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.²² The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has willfully or repeatedly violated the Act or a Commission rule.²³

8. We find below that CenturyTel apparently failed to properly route all calls to ported numbers for which CenturyTel was the N-1 carrier. Based on the preponderance of evidence, we therefore conclude that CenturyTel is apparently liable for a forfeiture of one hundred thousand dollars (\$100,000) for apparently willfully and repeatedly violating Commission orders and section 52.26(a) of the Commission's rules

A. CenturyTel Apparently Has Willfully and Repeatedly Failed to Route Calls to Wireless Customers Who Have Ported Numbers

9. CenturyTel concedes that “[u]nder the Commission’s rules, the carrier in the call routing path that immediately precedes the terminating carrier is responsible for ensuring that database queries are performed.”²⁴ Further, CenturyTel correctly states that “the N-1 carrier is responsible for ensuring that the database query is performed to effectuate number portability.”²⁵ According to CenturyTel, “[f]or a local call made by CenturyTel’s customer to a wireless customer who has a ported telephone number, CenturyTel’s LNP-capable switch performs the database query necessary to obtain the LRN that corresponds to the dialed telephone number. Based on this information, CenturyTel then routes the call to the wireless carrier serving the ported number.”²⁶

²¹ 47 U.S.C. § 503(b)(1)(B), 47 C.F.R. § 1.80(a)(1), *see also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464). Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law 47 U.S.C. § 312(f)(1). The legislative history to section 312(f)(1) of the Act indicates that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, ¶ 5 (1991) (“*Southern California Broadcasting*”). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage). “Repeated” means that the act was committed or omitted more than once, or lasts more than one day. *Southern California Broadcasting*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision*, 16 FCC Rcd at 1362, ¶ 9.

²² 47 U.S.C. § 503(b), 47 C.F.R. § 1.80(f)

²³ *See, e.g., SBC Communications, Inc., Apparent Liability for Forfeiture*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002)

²⁴ *See* Letter from Karen Brinkmann and Tonya Rutherford, Latham and Watkins LLP, counsel for CenturyTel to Mika Savir, Investigations and Hearings Division, Enforcement Bureau, FCC, at 2 (Feb. 24, 2004) (“LOI Response”)

²⁵ *Id.*

²⁶ *Id.*

10. During the relevant period, however, not all of CenturyTel's switches were LNP-capable. CenturyTel stated that as of February 24, 2004, more than two months after the Enforcement Bureau launched its investigation, it was not LNP-capable in 20 switches in the state of Washington.²⁷ According to CenturyTel, those switches were not LNP-capable until April 14, 2004.²⁸ CenturyTel takes the position that in those instances where it was not LNP-capable, and it did not have a direct trunk with the porting wireless carrier,²⁹ it discharged its N-1 carrier duty by routing local calls to an incumbent LEC to perform the database query.³⁰ Where CenturyTel did not have an LNP-capable switch and had a direct trunk with the porting wireless provider, however, CenturyTel routed all local and extended area service wireless calls to the porting wireless carrier.³¹ Then, according to CenturyTel, "[i]f the porting wireless carrier does not perform a database query ... , the CenturyTel customer receives an outgoing message indicating that the wireless subscriber's number is not in service."³²

11. The record is undisputed that where CenturyTel did not have LNP-capable switches and had a direct trunk with the porting wireless provider, CenturyTel default routed all local wireless calls to the porting wireless carrier.³³ Unless this wireless carrier performed the database query, the CenturyTel customer's call was dropped. Therefore, CenturyTel's call routing practice in Washington apparently violated the Commission's orders regarding the routing of calls to ported numbers and section 52.26(a) of the Commission's rules.

12. CenturyTel argues that if a LEC, such as CenturyTel, is not yet required to be LNP-capable, there is an ambiguity regarding its obligation to perform (or have performed) database queries and thus an ambiguity regarding its obligation to route calls.³⁴ According to CenturyTel, "the Commission should deem it unlawful for a porting wireless carrier to refuse to perform database queries for calls received from a non-LNP-capable carrier destined for a ported wireless number."³⁵

13. We disagree. The Commission's rules are clear regarding the obligation to route calls and to query the number portability database. Since the *Second Report and Order* in 1997, the Commission has required the N-1 carrier to ensure that the number portability database query is performed.³⁶ No exception exists for non-LNP-capable carriers. Our conclusion is supported by the NANC Local Number

²⁷ *Id.* at 4

²⁸ See Letter from Karen Brinkmann and Tonya Rutherford, Latham and Watkins LLP, counsel for CenturyTel to Mika Savir, Investigations and Hearings Division, Enforcement Bureau, FCC, at 1 (Apr. 14, 2004) ("April 14 LOI Response").

²⁹ The porting wireless carrier is the wireless carrier that ported the number of one of its subscribers to another carrier when that subscriber changed carriers.

³⁰ LOI Response at 5. CenturyTel also routed wireless extended area service calls to Qwest's tandem, if it did not have a direct trunk to the wireless carrier. *Id.* at 4. For interLATA calls, the N-1 carrier would generally be the calling party's interexchange carrier ("IXC").

³¹ LOI Response at 6

³² *Id.*

³³ Default routing occurs when the N-1 carrier or its contracted entity fails to perform the LNP query and the call is routed by default to the carrier that originally serviced the telephone number. *Second Report and Order*, 12 FCC Rcd at 12324-25, ¶ 76.

³⁴ LOI Response at 6

³⁵ *Id.* at 7

³⁶ *Second Report and Order*, 12 FCC Rcd at 12324, ¶ 74

Portability Administration Working Group Report on Wireless Wireline Integration, relied on by CenturyTel in response to the Bureau's LOI.³⁷ This report specifically states that where the N-1 carrier, either a LEC or an IXC, is not LNP-capable, the N-1 carrier "should arrange with [another carrier] to terminate default routed calls."³⁸

14 In support of its position that the Commission's requirements are ambiguous, CenturyTel relies on its own prior requests for rule changes and third party statements made in *ex parte* letters and NANC filings describing the number portability requirements. The third party statements and filings, however, do not support CenturyTel's position. They also demonstrate that CenturyTel had knowledge of its call routing requirements

15. First, CenturyTel's reliance on *ex parte* letters it filed with the Commission last year in the Telephone Number Portability docket to support its contention of ambiguity is misplaced.³⁹ In these *ex parte* letters, CenturyTel asked the Commission to require a wireless customer's former wireless service provider to perform the LNP database query and transit the call to the new wireless service provider, without charge to the LEC.⁴⁰ Notably, CenturyTel did not therein contend that the rule was ambiguous. CenturyTel merely asked the Commission to change the current rule to require the former "N" carrier, instead of the N-1 carrier, to bear responsibility for the database query in this particular situation. A request for a change in the Commission's rules does not release CenturyTel from complying with our rules. On the contrary, the letters demonstrate that CenturyTel was aware that our rules require the N-1 carrier either to perform the database query or to make arrangements with another carrier to do so.

16. Similarly, we reject CenturyTel's argument that a request for clarification filed by Alltel with NANC supports the conclusion that our rules are ambiguous.⁴¹ CenturyTel asserts that Alltel "raised with the [NANC] the issue of whether wireless carriers should be obligated to perform default number

³⁷ Documents CT 0000010-32, CT 0000058. These documents were provided in response to the request for CenturyTel's policies and procedures for ensuring that CenturyTel's customers' calls can be routed to ported numbers. See LOI Response at 7

³⁸ Document CT 0000030

³⁹ LOI Response at 6-7

⁴⁰ See, e.g., Letter from Gerard J. Duffy, Blooston, Mordkofsky, Dickens, Duffy, and Prendergast, to Marlene F. Dortch, Secretary, FCC, CC Docket No. 95-116 (filed Oct. 20, 2003) ("CenturyTel Oct. 20 *Ex Parte* Letter"), Letter from Mary J. Sisak, Blooston, Mordkofsky, Dickens, Duffy, and Prendergast, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116 (filed Oct. 23, 2003), Letter from Michael T. McMenamin, Associate Counsel, USTA, to Marlene F. Dortch, Secretary, FCC, CC Docket No. 95-116 (filed Oct. 23, 2003), Letter from Michael T. McMenamin, Associate Counsel, USTA, to Marlene Dortch, Secretary, FCC, CC Docket No. 95-116 (filed Oct. 31, 2003). The CenturyTel Oct. 20 *Ex Parte* Letter and attachments were included in the LOI Response. See Documents CT 0000148-156. CenturyTel's request was as follows

When a Wireless Service Provider (WSP) ports a number to another WSP within a CenturyTel Local rate center and CenturyTel has direct connection to the porting WSP, then the FCC must require the WSP to perform the LNP database query and transiting to the alternative WSP

The costs associated with LNP query and transiting should be the responsibility of the porting WSP

This obligation must be required of the porting WSP until such time that CenturyTel is required to provide LNP in CenturyTel's central office switch.

See, e.g., CenturyTel Oct. 20 *Ex Parte* Letter at Attachment. See also Document CT 0000153.

⁴¹ LOI Response at 6, Documents CT 0000165-66.

portability queries when the N-1 carrier fails to perform the query.”⁴² CenturyTel misses the point of Alltel’s filing. Therein, Alltel explained that in many cases N-1 carriers fail to perform the database query, misrouting calls to the ported customer’s original carrier where the call fails if the original carrier does not perform the query. Importantly, Alltel contended that default queries by the original carrier are not a “long term solution” and that “[t]hese misrouted calls utilize facilities of the [original carrier] needlessly at a cost that will far exceed dip charges that can be billed back to the N-1 carrier who failed to perform the [number portability] query.”⁴³ The Alltel request for clarification does not alter CenturyTel’s number portability or call routing obligations.

17. CenturyTel also argues that compliance with the rule is infeasible because it would require traffic to be routed to a third party tandem access provider to perform a database query and that such routing violates the terms of CenturyTel’s interconnection agreements with wireless carriers.⁴⁴ CenturyTel’s feasibility argument is flawed because our rules do not require CenturyTel to route traffic to third party tandem access providers. Instead, CenturyTel is permitted to arrange for the default wireless carrier that originally serviced the ported telephone number to perform the query. Documents produced by CenturyTel indicate that it has performed such database queries when another carrier routed calls to a CenturyTel switch by default. Specifically, CenturyTel’s documents describe a situation where a non-LNP-capable N-1 carrier in Missouri failed to perform LNP queries for ported lines and instead routed calls by default to CenturyTel’s switch.⁴⁵ CenturyTel performed the database queries and properly routed these calls.⁴⁶ According to CenturyTel’s document, the N-1 carrier was “*obligated to do*” these queries and CenturyTel intended to bill the N-1 carrier for them.⁴⁷ We find that CenturyTel’s own practices demonstrate that it is feasible to comply with the rule.⁴⁸

18 CenturyTel contends that it is not “technically possible” to perform the database query if the CenturyTel switch is not LNP-capable⁴⁹ and that it is not obligated as an N-1 carrier to negotiate new business arrangements with the tandem provider.⁵⁰ This position is unpersuasive. As stated above, our rules expressly permit the N-1 carrier whose switches are not LNP-capable to arrange for another carrier to perform the database query. Moreover, nothing in our rules requires routing to a tandem provider. Finally, during the pre-implementation period as a result of the Commission’s many specific pronouncements regarding the requirements of local number portability, CenturyTel had sufficient time and warning to negotiate any necessary business arrangements in order to fulfill its obligations.

19. The Commission has consistently held that the N-1 carrier has the obligation to ensure that the call routing query is performed, that carriers are required to route calls to ported numbers, and that compliance with this rule is technically feasible for CenturyTel. Based on the record, we conclude that CenturyTel has apparently willfully and repeatedly violated Commission orders and section 52.26(a) of

⁴² LOI Response at 6

⁴³ Documents CT 0000165-66 (Problem Identification and Description form submitted by Alltel to NANC-LNPA Working Group (Jan. 23, 2004)).

⁴⁴ See April 14 LOI Response at 2

⁴⁵ See Document CT 0000158.

⁴⁶ *Id*

⁴⁷ *Id* (emphasis added)

⁴⁸ We note that billing for database queries on default routed calls is discussed in the *Second Report and Order*, 12 FCC Rcd at 12326, ¶ 78.

⁴⁹ April 14 LOI Response at 2.

⁵⁰ *Id* at 3.

for willfully and repeatedly violating Commission orders and section 52.26(a) of the Commission's rules, 47 C.F.R. § 52.26(a).

24. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE, CenturyTel, Inc., CenturyTel of Washington, Inc., CenturyTel of Cowiche, Inc., and CenturyTel of Inter Island, Inc. SHALL PAY the full amount of the proposed forfeiture currently outstanding on that date or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

25. Payment of the forfeiture may be made by check or similar instrument, payable to the order of the Federal Communications Commission. Such remittance should be made to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the NAL/Acct. No. and FRN No. referenced above

26. The response, if any, to this NOTICE OF APPARENT LIABILITY FOR FORFEITURE must be mailed to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B443, Washington, D.C. 20554 and e-mailed to Mr. Davenport at william.davenport@fcc.gov in Adobe PDF format. The response must include the NAL/Acct. No. referenced above

27. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

28. Requests for payment of the full amount of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE under an installment plan should be sent to Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁵⁶

29. Under the Small Business Paperwork Relief Act of 2002, Pub.L.No. 107-198, 116 Stat. 729 (June 28, 2002), the Commission is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within 30 days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Investigations and Hearings Division, Enforcement Bureau, 445 12th Street, S.W., Washington, D.C. 20554. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list in Attachment A of this NAL. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to section 503(b) of the Communications Act. If you have any questions regarding any of the information contained in Attachment A, please contact the Commission's Office of Communications Business Opportunities at (202) 418-0990

30. IT IS FURTHER ORDERED that the Enforcement Bureau shall send, by certified mail/return receipt requested, a copy of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE to Glen F Post, III, Chief Executive Officer, CenturyTel, Inc., 100 CenturyTel Drive, Monroe, LA 71203 and to

⁵⁶ See 47 C.F.R. § 1.1914.

the Commission's rules by failing to properly route calls to ported wireless numbers by either performing the number portability database query or making arrangements with another carrier to do so.

B. Proposed Forfeiture Amount

20. Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$120,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,200,000 for a single act or failure to act.⁵¹ In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."

21. As discussed above, the Commission has consistently held that the N-1 carrier has the obligation to ensure that the call routing query is performed and that all calls are properly routed to ported numbers. The Commission specifically held in its *Second Report and Order* that number portability is essential to meaningful facilities-based competition in the provision of local exchange service.⁵² If carriers, such as CenturyTel, fail to ensure that the call routing query is performed and that calls are properly routed to ported numbers, the competitive benefits of number portability will be diminished. The Commission has been implementing a phased deployment of local number portability since 1996 and carriers, such as CenturyTel, have been on notice since 1997 that, irrespective of whether their switches are LNP-capable, they have obligations to route ported numbers. CenturyTel's apparent failure to ensure proper call routing to ported numbers is counterproductive to the Commission's pro-competitive goals. Due to CenturyTel's apparently willful and repeated violation of section 52.26(a) of the Commission's rules, and the Commission's requirement to route calls properly, we find that a proposed forfeiture is warranted.

22. The Commission has not established a base forfeiture amount for failure to comply with section 52.26(a). We note, however, that section 503(b)(2)(D)⁵³ of the Act and the Forfeiture Policy Statement⁵⁴ allow the Commission considerable flexibility in determining the appropriate forfeiture.⁵⁵ Therefore, based on the reasons discussed above, including the fact that the record contains evidence only of limited routing failures in one state, we find that CenturyTel is apparently liable in the amount of one hundred thousand dollars (\$100,000).

IV. ORDERING CLAUSES

23. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and sections 0.111, 0.311, and 1.80 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, and 1.80, CenturyTel, Inc., CenturyTel of Washington, Inc., CenturyTel of Cowiche, Inc., and CenturyTel of Inter Island, Inc. are hereby NOTIFIED of their APPARENT LIABILITY FOR FORFEITURE in the amount of one hundred thousand dollars (\$100,000)

⁵¹ 47 U.S.C. § 503(b)(2)(B), *see also* 47 C.F.R. § 1.80(b)(2); *see also Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000).

⁵² *Second Report and Order*, 12 FCC Rcd at 12285, ¶ 4.

⁵³ 47 U.S.C. § 503(b)(2)(D).

⁵⁴ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁵⁵ 47 U.S.C. § 503(b)(2)(D), *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, ¶ 27; 47 C.F.R. § 1.80(b)(4).

Karen Brinkmann and Tonya Rutherford, Latham and Watkins LLP, 555 Eleventh Street, N.W , Suite 1000, Washington, D.C. 20004.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

ATTACHMENT A

FCC List of Small Entities

As described below, a "small entity" may be a small organization, a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

Note: With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

<i>International Services</i>	
International Broadcast Stations	

International Public Fixed Radio (Public and Control Stations)	\$12 5 Million in Annual Receipts or Less
Fixed Satellite Transmit/Receive Earth Stations	
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
Mass Media Services	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	Auction Special Size Standard – Small Business is less than \$40M in annual gross revenues for three preceding years
Wireless and Commercial Mobile Services	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	
700 MHz Guard Band Licensees	Auction special size standard - Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - Small Business is \$40M or less in annual gross revenues for three previous calendar years Very Small Business is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard - Small Business is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	Small Business is 1,500 employees or less Small Government Entities has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	

	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	Small Business is \$40M or less average annual gross revenues for three preceding years
39 GHz Service	Very Small Business is average gross revenues of \$15M or less for the preceding three years
Multipoint Distribution Service	Auction special size standard (1996) – Small Business is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – Small Business has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
218-219 MHz Service	First Auction special size standard (1994) – Small Business is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Miscellaneous	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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DA 04-1340
May 13, 2004

WIRELESS TELECOMMUNICATIONS BUREAU AND WIRELINE COMPETITION BUREAU REMIND CARRIERS OUTSIDE THE 100 LARGEST MSAs OF THE UPCOMING MAY 24, 2004 LOCAL NUMBER PORTABILITY IMPLEMENTATION DEADLINE

On May 24, 2004, the Commission's wireless local number portability (LNP) requirements will take effect in areas outside the 100 largest Metropolitan Statistical Areas (MSAs).¹ Under these rules, commercial mobile radio service (CMRS) carriers outside the 100 largest MSAs must be able to port their numbers by May 24 or within six months of receiving a "bona fide" request from another carrier to provision their switches for wireless porting, whichever is later. Similarly, wireline carriers outside the 100 largest MSAs must be able to port their numbers to CMRS carriers by May 24 or within six months of receiving a bona fide request, whichever is later.

As the May 24th deadline approaches, it is critical that affected carriers understand their porting obligations and take the necessary steps to ensure the smooth deployment of LNP. We urge carriers to make every effort prior to the deadline to test their own systems and to exchange contact information and conduct testing with other carriers in their area.

In response to questions that some carriers may have about particular aspects of the LNP rules, we also reiterate the following guidance from the Commission's October and November orders in the LNP proceeding:²

Bona Fide Requests – Any carrier outside the top 100 MSAs that received a bona fide request for wireless porting on or before November 24, 2003, must begin porting on May 24, 2004. A bona fide request may come from any carrier whose service area overlaps with the service area of the carrier receiving the request. In the *Wireless LNP* and *Intermodal LNP* orders, the Commission clarified that it is not necessary for the requesting carrier to have an interconnection

¹ Within the top 100 MSAs, the wireless LNP rules have been in effect since November 24, 2003.

² Telephone Number Portability, Carrier Requests for Clarification of Wireless-Wireless Porting Issues, CC Docket No. 95-116, *Memorandum Opinion and Order*, 18 FCC Rcd 20971 (2003) (*Wireless LNP Order*); CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 23697 (2003) (*Intermodal LNP Order*).

agreement with the requested carrier.³ While it is permissible for carriers to negotiate such agreements, no carrier may unilaterally refuse to port with another carrier because the carrier will not negotiate an interconnection agreement. Once a carrier has implemented LNP capability in response to a bona fide request from one carrier, it must port numbers on request to any other carrier providing service in the area that provides basic contact and technical information sufficient to perform the port.

Rate Centers -- In the *Intermodal LNP Order*, the Commission addressed questions regarding wireless porting "outside the rate center," i.e., porting a wireless or wireline number to a wireless carrier that does not have a physical point of presence or numbering resources in the rate center where the number was originally assigned. The Commission clarified that porting is required regardless of whether the porting-in carrier has a presence or numbering resources in the originating rate center so long as 1) the requesting wireless carrier's coverage area overlaps the geographic location in which the customer's number is provisioned, and 2) the porting-in carrier maintains the number's original rate center designation following the port to prevent customer confusion.⁴

Routing Issues -- Some carriers have expressed concern about transport costs associated with routing calls to ported numbers where porting results in calls to the ported number being routed outside the original rate center. The Commission clarified in the *Intermodal LNP Order* that the requirements of the LNP rules do not vary depending on how calls to the number will be routed after the port occurs.⁵ Thus, a carrier may not refuse or condition a porting request based on routing issues.

We also remind carriers that, regardless of the status of their obligation to provide number portability, all carriers have the duty to route calls to ported numbers. In other words, carriers must ensure that their call routing procedures do not result in dropped calls to ported numbers.⁶ Furthermore, the Commission clearly imposed requirements on the carrier immediately preceding the terminating carrier, designated the "N-1 carrier," to ensure that number portability databases are queried and thus that calls are properly routed.⁷

WTB Contact: Jennifer Salhus, 202-418-2823

WCB Contact: Pam Slipakoff, 202-418-7705

Media Contact: Lauren Patrich, 202-418-7944

³ *Wireless LNP Order*, 18 FCC Rcd at 20977; *Intermodal LNP Order*, 18 FCC Rcd at 23711.

⁴ *Intermodal LNP Order*, 18 FCC Rcd at 23706.

⁵ *Id.* at 23713.

⁶ Telephone Number Portability, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7277 (1997)

⁷ Telephone Number Portability, *Second Report and Order*, 12 FCC Rcd 12281, 12323-24 (1997).